

CENTER FOR JUSTICE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

NATASHA HERNANDEZ,

Plaintiff,

vs.

CITY OF SPOKANE, and OFFICER
DAN LESSER (#452),

Defendants.

No.:

COMPLAINT FOR DAMAGES

JURY DEMANDED

INTRODUCTION

This civil rights action seeks monetary damages against Defendant CITY OF SPOKANE and one of its employees for violations of the Plaintiff's, civil rights guaranteed under the Fourth and Fourteenth Amendment pursuant to 28 U.S.C. §§ 1983 and 1988. The specific deprivation occurred when the Defendant City

1 of Spokane's police dog, Rav, acting under the direction of Defendant Lesser,
2 attacked, restrained and bit Plaintiff, without probable cause.
3

4 **I. PARTIES**

5 1.1 Plaintiff NATASHA HERNANDEZ, is a resident of Spokane
6 County, within the Eastern District of Washington. She is a real party in interest in
7 this case.
8

9 1.2 Defendant CITY OF SPOKANE, is a municipality within the
10 State of Washington whose policies resulted in Plaintiff's deprivation of her
11 property rights. The City is sued directly in its capacity as owner of the dog, Rav,
12 and in its capacity as employer of Defendant, Lesser.
13

14 1.3 Defendant, DAN LESSER, is believed to be a resident of
15 Spokane County, and at all times material to this litigation has been employed by
16 the City of Spokane. Defendant Lesser is sued in his personal capacity.
17

18 **II. JURISDICTION AND VENUE**

19 2.1 All acts complained of occurred in the Eastern District of Washington.

20 2.2 Venue is proper in the United States District Court for the Eastern
21 District of Washington.

22 2.3 Jurisdiction is proper in the United States District Court pursuant to
23 Title 42, United States Code § 1988; Title 28 USC § 1331; and 28 USC § 1343.
24

25 2.4 This court has personal and subject matter jurisdiction.

III. FACTS

3.1 On or about March 8, 2013, Plaintiff resided at the Liberty Motel on North Division Street in the City of Spokane with her children. She noticed two individuals breaking and entering into the Spokane Discount Retail Store located at 6715 N. Division. She immediately phoned the police and reported that a robbery was in progress. Natasha described the incident and the suspects to the 911 operator and ended the call once the operator had a clear picture of the incident.

3.2 Shortly thereafter Natasha was doing her laundry at the Motel's first floor laundry room when she stopped at a corner of the building to set her laundry down and rearrange what she was carrying. Without any warning, a dog suddenly appeared from around the corner and attacked her. The dog jumped up on Natasha and bit her in the stomach. The dog would not release Natasha from its grip. Officer Dan Lesser, the handler, appeared and gave a verbal command for the dog to release Natasha. The dog failed to comply and continued to bite Natasha in the stomach. Officer Lesser then attempted to pull the dog off of Natasha while repeating verbal commands for the dog to release. Again, this failed and Natasha was dragged across the ground by the dog that still refused to cease biting.

3.3 Upon information and belief, the dog, named Rav, was a Police dog owned by the City of Spokane. The handler, Defendant Lesser had responded to Plaintiff's own phone call about the burglary in progress and had released the dog

1 on the scent of the perpetrators. Defendant Lesser failed to warn innocent
2 bystanders that a police dog was present and active. Instead of catching the
3 burglars, the dog encountered Plaintiff and seized her in its jaws as described
4 above.

5
6 3.4 According to records of the City of Spokane, the dog Rav had
7 previously failed to release and had bitten the “wrong” person in training sessions
8 held before the actions described herein. Defendant Lesser reports on these forms
9 having to give the dog “a correction” for failing to “call off”.

10
11 **IV. FEDERAL CLAIMS FOR RELIEF**
12 **Violations of Title 42, United States Code § 1983 & 1985(3)**

13 4.1 As set forth in Paragraphs 1.1 through 1.3 and 3.1 through 3.3 above,
14 Defendants’ conduct constitutes a deprivation of federally protected rights under
15 color of law. In particular, the seizure of Plaintiff by Defendant’s police dog
16 constitutes an unlawful seizure under the Fourth and Fourteenth Amendments to
17 the U.S Constitution.

18
19 4.2 Further, the Defendant Lesser used excessive force against Plaintiff, and
20 the use of force was caused by an unconstitutional custom or practice of the
21 Defendant City. Sending a dog on a scent in an unenclosed space, especially a
22 dog with a history of failing to release, carries a near certain risk that the dog will
23
24
25

1 attack an innocent bystander. The City violated Plaintiff's civil rights by failing to
2 adequately train and supervise its officers in the proper use of police dogs.

3
4 4.3 The Defendant may not assert the defense of qualified immunity
5 because the law on this subject is clear that a "reasonable officer would have been
6 aware that such conduct violated Plaintiff's rights." See e.g., *Rogers v City of*
7 *Kennewick*, 304 Fed. Appx. 599 (9th Cir. 2008).

8
9 4.4 As a direct and proximate result of the actions and omissions of
10 Defendants, Plaintiff suffered physical and emotional damages in an amount to be
11 determined at trial, but no less than \$38,000.00.

12
13 **V. DEMAND FOR JURY and**
PRAYER FOR RELIEF

14 Plaintiff respectfully demands a jury trial on all issues and that Plaintiff be
15 granted the following relief:

16
17 5.1 Award economic and non-economic damages against all Defendants
18 in an amount to be proven at trial, and such exemplary or punitive damages as
19 provided by law;

20
21 5.3 Prejudgment and post-judgment interest as allowed by law;

22 5.4 Plaintiff's reasonable attorneys' fees and costs, pursuant to 42 USC §
23 1988, or as otherwise provided by law; and
24
25

1 5.5 For such other and further relief as the court deems just and equitable.

2 DATED THIS 27th day of January, 2015.

3
4 s/Jeffry K. Finer

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